

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 97-6416

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DELROY LINDBURGH AMBURSLEY,

Defendant - Appellant.

No. 97-6744

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DELROY LINDBURGH AMBURSLEY,

Defendant - Appellant.

Appeals from the United States District Court for the Eastern District of North Carolina, at Raleigh. Malcolm J. Howard, District Judge. (CR-93-53-H, CR-93-52-H, CA-97-51-4-H)

Submitted: September 25, 1997

Decided: October 22, 1997

Before LUTTIG, MICHAEL, and MOTZ, Circuit Judges.

No. 97-6416 affirmed and No. 97-6744 dismissed by unpublished per curiam opinion.

Delroy Lindburgh Ambursley, Appellant Pro Se. Jane H. Jolly, Assistant United States Attorney, Fenita Talore Morris, Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

In these consolidated appeals, Appellant appeals the district court's orders denying his motion for a new trial under Fed. R. Crim. P. 33 and declining to grant recusal under either 28 U.S.C. § 144 (1994) or 28 U.S.C. § 455 (1994). The district court also denied Appellant's request to hold his 28 U.S.C.A. § 2255 (West 1994 & Supp. 1997) motion in abeyance. We have reviewed the record and the district court's opinion denying the motion for a retrial and find no reversible error. Accordingly, we affirm that order on the reasoning of the district court. United States v. Ambursley, No. CR-93-53-H (E.D.N.C. Mar. 5, 1997).

With respect to the appeal of the district court's order declining to recuse itself, we dismiss the appeal for lack of jurisdiction because the order is not appealable. This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291 (1994), and certain interlocutory and collateral orders, 28 U.S.C. § 1292 (1994); Fed. R. Civ. P. 54(b); Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541 (1949). The order here appealed is neither a final order nor an appealable interlocutory or collateral order. Consequently, we dismiss the appeal as interlocutory. Appellant's motion in this court to hold his 28 U.S.C. § 2255 proceedings in abeyance pending the disposition of appeal No. 97-6416 is denied as moot. We also deny Appellant's "Motion for Determination An[d] Petition for Order of Remand of 28 USCA 2255 Back to District Court."

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

No. 97-6416 - AFFIRMED

No. 97-6744 - DISMISSED